



**PROGRAM** : LLB/BA (LAW)/BCOM (LAW)  
**SUBJECT** : **LAW OF PERSONS AND THE FAMILY**  
**CODE** : PER0000/LPF41YO  
**DATE** : EXAM 4 NOVEMBER 2020  
**DURATION** : THREE HOURS  
**WEIGHT** : 50:100 (of final mark)  
**TOTAL MARKS** : 70

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**INSTRUCTIONS TO CANDIDATES:**

1. Answer all the questions on the answer paper (document). Provide relevant authority (case law and/or legislation) where applicable. Provide reasons for your answers.
2. Please write your surname, initials and student number on the answer paper.
3. Your answer paper must be loaded onto Blackboard under the “assignment” section.
4. You will have 4 hours to complete the exam, and your answers must be submitted within the allocated timeframe.
5. You may not seek assistance of a fellow student or the tutor. You may not use any part of another students answers to complete this assessment. You are reminded that all relevant rules and policies of the University and the Faculty applies to this test. In regard to the assessment, the normal academic integrity rules apply. For example, this means that you cannot cut-and-paste material other than your own work as answers for this assessment. By undertaking this online assessment, you will be deemed to have made the following declaration:  
“I certify that my submitted answers are entirely my own work and that I have neither given nor received any unauthorized assistance in this assessment item”.

## **QUESTION ONE**

1. From the 13th week until the 20th week of the gestation period the pregnancy may be terminated:
  - a. Whenever the woman requests it.
  - b. Where it would endanger the woman's life.
  - c. Where it would pose a risk of injury to the foetus.
  - d. b and c.
  - e. None of the above.
  
2. Section 7 of the Children's Act 38 of 2005 lists a number of factors that must be considered by a court when determining what is in the best interests of a child. Some of these factors are:
  - a. The nature of the personal relationship between the child and the parents.
  - b. Whether the child's parents are married in community of property in a civil law marriage.
  - c. The capacity of the parent or other care-giver to provide for the needs of the child.
  - d. a and c are correct.
  - e. a, b and c are correct.
  
3. The term "legal subject" means:
  - a. The place that the law assigns to one at birth.
  - b. An entity that has economic value but cannot participate in legal or commercial traffic.
  - c. An entity that can have rights, duties and responsibilities.
  - d. The *nasciturus* fiction.
  - e. Domicile at the place of origin.
  
- 4.. The effect of an order of presumption of death is that:
  - a. The person is regarded as being alive for legal purposes.
  - b. There is a rebuttable presumption that the person is dead.
  - c. There is an irrebuttable presumption that the person is dead.
  - d. There is an irrebuttable presumption that the person was not found.
  - e. a and d.
  
5. The following statements regarding the consequences of the unlawful termination of the engagement are true:
  - a. Damages may be awarded as compensation for actual loss suffered.
  - b. Damages that are awarded may include pecuniary and non-pecuniary loss.
  - c. The parties will be regarded as having been married in community of property and the estate will be divided accordingly.
  - d. a and b.
  - e. a, b and c.
  
6. Human tissues and human organs may be legally used for the following purposes:
  - a. Medical research.
  - b. Organ donation.
  - c. Sold to a needy recipient.
  - d. a and b are correct.
  - e. a and c are correct.

7. The following entities are juristic persons in South African law:

- a. Absa bank
- b. The University of Johannesburg
- c. Eskom
- d. a. and c
- e. a, b and c.

8. The following do NOT have legal capacity in terms of South African law:

- a. A newborn baby.
- b. A mentally ill person
- c. A motor vehicle
- d. a and b
- e. a and c

9. *Restitutio in integrum* can be used by:

- a. The minor who contracted without the required consent.
- b. The minor who contracted with the required consent.
- c. A prodigal who received a donation.
- d. a and b.
- e. a, b and c.

10. Children born due to artificial fertilisation can be classified as AID or AIH children. "AID" means:

- a. Children that are conceived with the gametes of the mother's spouse.
- b. Children that are conceived with the gametes of a third party.
- c. Children that are conceived out of wedlock.
- d. Children that are conceived only with the gamete of the mother.
- e. None of the above.

11. Regarding the requirement that birth must be completed before legal subjectivity commences, in our law there is a rule that:

- a. Completion of the birth cannot take place under any circumstances if the mother dies prior to the birth.
- b. The umbilical cord must be cut.
- c. Completion of birth is always dependent on the application of medical procedures.
- d. There should be complete separation of the foetus from the mother's body, even though the umbilical cord has not been cut.
- e. a and c.

12. The following statement/s regarding the requirement for evidence in respect of child murder or concealment of birth, found in section 239 of the Criminal Procedure Act 51 of 1977, are correct:

- a. Such child shall be deemed to have been born alive if the child is proved to have breathed.
- b. It does not matter whether or not the child had independent circulation.
- c. It is not necessary to prove that the child was entirely separated from the body of its mother.
- d. b and c are correct.
- e. a, b and c are correct.

13. The case of *Eilon v Eilon* 1965 1 SA 705 (A) illustrates that:

- a. In order to establish a domicile of choice the intention must be to settle for an indefinite period.
- b. The presence at a specific place must be subsequent to a divorce order.
- c. A child's mother must always give permission for the adoption of the child.
- d. Only the women's consent is needed to terminate her pregnancy.
- e. c and d.

14. The two most important rules of domicile are that:

- a. No person can be without a domicile at any time and no person can have more than one domicile at any time.
- b. The *lex loci domicilli* of the man and the *lex loci domicilli* of the woman are always the same.
- c. Prisoners can never have a domicile of any kind.
- d. Lawful presence.
- e. c and d.

15. The following remarks regarding the effect of mental illness on capacity to act are true:

- a. Any legal action concluded by a mentally ill person is void *ab initio* and cannot be ratified at a later stage.
- b. The mental condition of the person at the time of performing the juristic act is the deciding factor.
- c. A mentally ill person can have a *lucidum intervallum* during which he or she is mentally sound.
- d. a and c.
- e. a, b and c.

[15]

## QUESTION TWO

- 2.1. Briefly compare a "juristic person" and a "natural person". (2)  
 Juristic person is a company and its legal subjectivity ends at deregistration<sup>1</sup>. A natural person's legal subjectivity ends at death<sup>1</sup>.
- 2.2. Name the requirements that must be met in order to use the *nasciturus* adage. (3)  
 Must be to the advantage of the nasciturus<sup>1</sup>  
 The benefit must accrue to the nasciturus after conception<sup>1</sup>  
 The nasciturus must eventually be born in the legal-technical sense<sup>1</sup>.
- 2.3. List the sources of the Law of Persons and Family Law. (3)  
 Constitution<sup>1</sup>, case law<sup>1</sup>, legislation<sup>1</sup>
- 2.4. Briefly explain what the test for mental illness is, that is used by the court. (2)  
 Mental illness or soundness must be proved on a balance of probabilities. Rebuttable presumption that every person is mentally sound. If the person has not been admitted to a healthcare establishment for the treatment of mental illness then the onus is on the person alleging that the person is mentally ill and vice versa.<sup>2</sup>

## QUESTION THREE

Sandile and Siyanda are in a romantic partnership with each other. They also have an adopted child, Bright, who is six years old. Bright told her school teacher that Sandile and Siyanda argue when Siyanda is drunk and that Siyanda hits Sandile. With reference to this set of facts, answer the following questions:

- 3.1. What legislation is applicable here? (1)  
Domestic Violence Act<sup>1</sup>
- 3.2. Define a “domestic relationship” in terms of the act. (2)  
Parties are married and or live together, parents of a child or hold a parental responsibility over the child, related by consanguinity, affinity or adoption, engaged, dating or in a customary relationship or they share the same residence. **Any two**
- 3.3. Explain if a duty to report lies with the teacher, also refer to (proposed) amendments to the legislation in this regard. (2)  
Yes a duty will lie with the teacher/ or in future will 1  
Domestic Violence amendment /explanation of it 1
- 3.4. Explain the procedure for obtaining a protection order in terms of the legislation (mentioned in 1 above). (10)

Affidavit to the Clerk 1 of the Magistrate’s court.1 Persons themselves can apply1 or someone on their behalf 1 The Magistrate will approve and make an interim protection order.1 It will be served on the perpetrator 1 along with a warrant of arrest.1 Then return date given 1 a final order will be given1 Order can include removal of firearms etc. 1 Any other details regarding process 1.

#### **QUESTION FOUR**

Summarise and compare the cases of *Pinchin v Santam Insurance Co. Ltd* 1963 (2) SA 254 (W) and *Road Accident Fund v Mtati*. [2005] ZASCA 65; [2005] 3 All SA 340 (SCA). (10)

##### **Pinchin v Santam Insurance**

###### **Facts**

In this case, a woman that was already six months pregnant, was injured through the negligence of a driver that was insured by the insurer. As a result of the accident, the woman lost amniotic fluid, but the birth process proceeded as normal. When the baby was four months old, he was diagnosed with cerebral paralysis and brain damage. According to the evidence of a medical expert, the loss of amniotic fluid caused the womb to contract which gave rise to a shortage of oxygen to the nasciturus.<sup>3</sup>

The question before the court was whether the child had a claim for injuries that he incurred before birth as a foetus.<sup>1</sup>

The court applied the nasciturus adage and came to the conclusion that the child can indeed claim compensation for injuries which were suffered by him as a foetus. In casu, however, it could not be proved that the injuries were caused by the negligence of the driver.<sup>1</sup>

##### **Road Accident Fund v Mtati**

###### **Facts**

In this case, the father of a child instituted action against an insurance company for damages suffered by the child as a result of the negligent driving of a vehicle which was insured by the insurer. The father’s wife was, at the time of the accident, pregnant with the child. When the child was born, it appeared that the child suffered brain damage and was mentally disabled.

The father alleged that the injuries and disabilities of the child were a result of the mother's injuries which she suffered as a result of the accident.<sup>1</sup>

### Legal Question

Was the nasciturus a person for purposes of the Act?<sup>1</sup>

The court also referred to foreign authority and quoted the following from *Martell v Merton and Sutton Health Authority* with approval. In law and in logic no damage can have been caused to the plaintiff before the plaintiff existed. The damage was suffered by the plaintiff at the moment that, in law, the plaintiff achieved personality and inherited the damaged body for which the defendants ... were responsible. The events prior to birth were mere links in the chain of causation between the defendants' assumed lack of skill and care and the consequential damage to the plaintiff. Legal subjectivity comes into existence at birth. The application of the adage outside of the law of succession is incorrect. There is a claim for injuries to a foetus but it lies with the law of delict.<sup>3</sup>

## **QUESTION FIVE**

Discuss Family Mediation in South Africa. In your discussion include the definition/s of Family Mediation; the advantages and disadvantages of Family Mediation; compare Western-style Family Mediation to African-style Mediation and refer to the works of South African authors. (10)

Any acceptable definition of family mediation eg; neutral third party, resolves family disputes between parties/tries to reach agreement 2

Any advantages: eg. Saves time, saves money, lessens opposition between the parties etc. 2

Any disadvantages: eg. Not suitable where domestic violence, one of the parties (usually the woman) may lack power etc. 2.

Any comparison between the two styles: eg. Western mediation is in private, one mediator, African mediation is in public, elders mediate etc. 2

Works of authors: any references to names of authors or titles of their articles on mediation. 2

## **QUESTION SIX**

Andrea and Barend are married. They have three children, namely Cynthia; Dewald and Eric. Andrea has a child born from a previous marriage, Zenithia. Andrea and Barend adopt a child, Quinton. Barend's brother is Theunis. Cynthia has a child, Fiona and Dewald has a child, Gerhard. Answer the questions that follow, providing reasons for your answers. (Remember that if you first draw a diagram it will be easier to work out the answers).

6.1. Can Cynthia and Dewald marry each other? (2)

No<sup>1</sup>, brother and sister cannot marry. One degree removed from the common ancestor. Collateral line of consanguinity<sup>1</sup>.

6.2. Can Quinton and Dewald marry each other? (2)

Yes<sup>1</sup>, not blood relatives. Adopted children are only prevented from marrying their adoptive parents.<sup>1</sup>

6.3. If Andrea and Barend get divorced, can Andrea marry Theunis? (2)

Yes<sup>1</sup>, related through affinity but through the indirect line.<sup>1</sup>

6.4. Can Fiona and Barend marry each other? (2)

No<sup>1</sup>, related through the direct line of consanguinity.<sup>1</sup>

6.5. Can Zenithia and Andrea marry each other? (2)

No<sup>1</sup>, direct line of consanguinity.<sup>1</sup>

**TOTAL: 70 MARKS**

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